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October 19, 2004

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Federal Communications Commission
Office of Secretary

Re: Unbundled Access to Network Elements,
WC Docket No. 04-313, CC Docket No. 01-338

Dear Ms. Dortch:

This letter provides notice for the public record that undersigned counsel to MCI filed the attached Reply Declaration of Terry Murray, which contains Confidential Information, under seal and subject to the Protective Order, DA 04-2603, as subsequently modified by DA 04-3152, in the above-referenced proceeding.

The unredacted, confidential version of this filing is being hand delivered to you, as well as to Janice Myles, Competition Policy Division, Wireline Competition Bureau, as required by the Protective Order. The confidential version will be made available for inspection pursuant to the terms of the Protective Order. Arrangements may be made by contacting the undersigned at 202-777-7700.

Two copies of the filing, as redacted, are submitted herewith pursuant to the Protective Order. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



A. Renée Callahan

cc: Janice Myles
Gary Remondino

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Before the
Federal Communications Commission
Washington, D.C. 20554

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OCT 19 2004

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Unbundled Access to Network Elements)
)
Review of the Section 251 Unbundling)
Obligations of Incumbent Local Exchange)
Carriers)

WC Docket No. 04-313

CC Docket No. 01-338

REPLY DECLARATION OF TERRY L. MURRAY

October 19, 2004

REDACTED – FOR PUBLIC INSPECTION

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I. INTRODUCTION

1. My name is Terry L. Murray. I am President of the consulting firm Murray & Cratty, LLC. My business address is 8627 Thors Bay Road, El Cerrito, CA 94530. My curriculum vitae, which was included as Exhibit 1 to my October 4, 2004 declaration, describes my qualifications and experience as they relate to this proceeding.
2. MCI, Inc. ("MCI") has asked me to respond to claims made by the incumbent local exchange carriers ("ILECs") concerning the extent to which actual deployment of mass-market switching demonstrates that competitive local exchange carriers ("CLECs") are not impaired in their ability to provide local exchange services to mass-market customers if they were denied access to unbundled local switching at prices based on Total Element Long Run Incremental Cost ("TELRIC"). The extremely brief time between my receipt of the ILECs' filings and the filing date for this declaration has prevented me from performing any detailed analysis of the data that the ILECs have presented (except where the ILEC data are identical to data that were originally presented in state impairment proceedings in which I participated). Nonetheless, even the most cursory review of the ILECs' filings shows that they suffer from many of the

shortcomings that I identified during my detailed review of ILEC data in state proceedings in California, Illinois, Michigan and Texas.¹

3. In Section II below, I show the importance of looking behind the simple competitor counts that the ILECs present in support of their claims of no impairment for mass-market switching. Applying the same screening criteria that I described in my October 4, 2004 declaration, I show that *none* of the wire centers in Illinois, Michigan and Texas for which SBC sought a finding of no impairment in the state proceedings² had three or more switch-based competitors that met all of my criteria. (These criteria are designed to ensure that the “actual marketplace evidence shows whether new entrants, as a practical matter, have surmounted barriers to entry in the relevant market,”³ so that “it is feasible to

¹ California Public Utilities Commission (“CPUC”) Rulemaking (“R.”) 95-04-043 and Investigation (“I.”) 95-04-044, Rulemaking and Investigation on the Commission’s Own Motion into Competition for Local Exchange Service (FCC Triennial Review 9-Month Phase); Illinois Commerce Commission (“ICC”) Docket No. 03-0595, In the Matter of the Implementation of the Federal Communications Commission’s Triennial Review Regarding Local Circuit Switching in the Mass Market; Michigan Public Service Commission (“Michigan PSC”) Case No. U-13796, In the Matter of, on the Commission’s Own Motion, to Facilitate the Implementation of the Federal Communications Commission’s Triennial Review Determinations in Michigan; and Public Utility Commission of Texas (“PUCT”) Docket No. 28607, Impairment Analysis of Local Circuit Switching for the Mass Market. As I discussed in my October 4, 2004 declaration, the California proceeding involved both SBC Communications, Inc. (“SBC”) and Verizon Communications, Inc. (“Verizon”). The other three state proceedings all involved claims of no impairment made by SBC.

² SBC sought findings of no impairment for entire Metropolitan Statistical Areas (“MSAs”), not for individual wire centers. The basic building block for the collection of most of SBC’s underlying data, however, was the wire center, and I was able to analyze its trigger claims using that market definition.

³ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the (continued)

provide service without relying on the incumbent LEC.”⁴) The wire center results for Illinois, Michigan and Texas parallel the conclusion that I documented in my October 4th declaration with respect to the SBC and Verizon trigger claims in California.

4. I also show in Section II that my conclusion does not depend on the selection of the highly granular wire-center market definition. Even if the data are analyzed at the MSA level, as both SBC and Verizon preferred, *none* of the MSAs in California, Illinois, Michigan or Texas for which SBC (or, in California, Verizon) sought a finding of no impairment contains three or more competitors that meet all of the criteria I applied to ensure that the actual deployment evidence is meaningful evidence of overcoming barriers to entry.
5. In Section III, I address a variety of other data that allegedly support the ILECs’ claims of no impairment for mass-market switching. I show that several of the indicators on which they rely do not provide any evidence about the actual deployment of switching to serve mass-market customers. Other indicators presented by the ILECs provide a highly misleading and exaggerated picture of such actual deployment.

Telecommunications Act of 1996 (CC Docket No. 96-989); Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147), FCC No. 03-36, (rel. Aug. 21, 2003) (hereinafter, “*Triennial Review Order*” or “*TRO*”), ¶ 99.

⁴ *Id.*, ¶ 93.

6. Finally, to supplement the findings based on my own participation in state proceedings concerning mass-market switching impairment, Exhibit 13 attached to my Reply Declaration provides a tabular summary of whether the various trigger candidates identified by the ILECs in state impairment proceedings meet each of the screening criteria that I identified in my October 4, 2004 declaration and thereby provides meaningful evidence of having overcome barriers to entry. This material further documents the extremely limited amount of switch-based competition for mass-market customers.
- II. THE ILECS' "TRIGGER" EVIDENCE DOES NOT DEMONSTRATE A LACK OF IMPAIRMENT IN ANY GEOGRAPHIC MARKET IN CALIFORNIA, ILLINOIS, MICHIGAN OR TEXAS**
7. As Attachment A to its Comments, SBC provided summaries of the state impairment proceedings in its region, including the proceedings related to mass-market switching. These summaries, understandably, focus particularly on SBC's evidentiary showing, which claimed that there were at least three competitors serving mass-market customers in each of the identified MSAs without relying on SBC's UNE switching.
8. SBC correctly notes that MCI's position in these state proceedings was, as it is here, that the wire center is the correct geographic market for analyzing the presence or absence of impairment. SBC also correctly notes that MCI applied a number of criteria to determine whether the companies that SBC counted toward the retail "trigger" actually fulfilled the letter and spirit of the requirements that the Commission identified in its *Triennial Review Order*. What is not entirely

clear from SBC's summaries is that MCI applied the full set of "trigger screens" or criteria that I identified in my October 4, 2004 declaration. What is even less clear, or entirely absent, from SBC's summaries is the evidentiary basis on which MCI "screened out" the various companies that SBC identified as trigger candidates.

9. My October 4, 2004 declaration provided a full description of the basis for MCI's positions in the California mass-market switching impairment proceeding, focusing on MCI's wire-center geographic market definition. Below, and in a series of Exhibits attached to this declaration, I provide an abbreviated summary of the same information for the states of Illinois, Michigan and Texas (states in which I also served as MCI's principal witness responding to SBC's trigger claims). I also provide the results of my analysis using SBC's preferred MSA market definition.
10. My analyses in California, Illinois, Michigan and Texas showed that switch-based competition has made few inroads in the mass market, particularly for residential customers. Despite the pioneering efforts of these states to open local markets to competition, there was not a single wire center or MSA in which three competitors all passed the relatively modest screening requirements that I had established. (Again, these screening requirements were designed to ensure that any competitor counted toward the retail trigger provides meaningful evidence of having overcome barriers to entry without access to UNE switching.) This conclusion was largely unaffected by my decision to "screen out" circuit-switched

cable telephony providers. The detailed evidence supporting these conclusions follows.

A. California

11. Although SBC identified only seven of the 32 MSAs in its California service territory as qualifying for a finding of no impairment, those seven MSAs encompass more than three-quarters of all SBC California residential lines.⁵ Thus, even if the Commission were to limit any finding of no impairment to those seven MSAs, the vast majority of SBC's residential customers would lose access to what has to date been the most successful form of local competition in California.
12. Moreover, SBC's trigger filing provided little evidence that those residential customers would have a meaningful alternative to SBC's own services if competitors' access to UNE switching were eliminated. Section III.B of my October 4th declaration described the companies that SBC (and Verizon) counted toward the retail trigger in California and explained that, apart from the cable competitors, almost no other companies offered service to residential customers. As the Commission can verify using the spreadsheet model provided as

⁵ CPUC Docket No. R.95-04-043/L.95-04-044, Direct Testimony of Curtis L. Hopfinger on Behalf of SBC California Regarding Mass Market Switching, December 12, 2003 (hereinafter, "CA Hopfinger Direct"), Attachment CH-7.

Proprietary Exhibit 2 to my October 4th declaration, only 14 of the 142⁶ wire centers in the MSAs for which SBC claimed no impairment had three or more CLECs that offer switch-based local service to residential customers. If cable competitors are excluded as well, *none* of these 142 wire centers had three or more switch-based CLECs serving residential customers. And, as I explained in my prior declaration, *none* of the 142 wire centers had three or more competitors that passed all of my screens.

13. Analysis at the ILECs' preferred MSA level, with far larger geographic reach, substantially increases the likelihood of finding three or more competitors (not all of which may offer service in the same parts of the MSA) that meet all of the pertinent criteria. Nevertheless, *none* of the seven MSAs for which SBC sought a finding of no impairment contained three or more competitors that met all of my criteria, as shown in Table 1 below.⁷

⁶ The seven California MSAs for which SBC sought a finding of no impairment have a total of 142 wire centers in which SBC claimed there were three or more switch-based competitors for mass-market services that met its criterion of serving at least five mass-market (*i.e.*, analog voice-grade) loops. There were a total of 153 wire centers in which SBC's data identified three or more switch-based competitors as serving at least one mass-market loop.

⁷ These results were generated using the MSA version of the spreadsheet tool that I presented along with my October 4, 2004 declaration. The SBC CA MSA spreadsheet tool is attached hereto as electronic-only Exhibit 1 to this Reply Declaration.

Table 1 - Results of MSA Analysis for SBC CA Territory

MSA	Number of Triggering CLECs					
	SBC Trigger Claim ⁸	CLECs that Own Switches and Are Unaffiliated ⁹	Active, Unaffiliated CLECs with ≥ 5 Lines	Active, Unaffiliated CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs with ≥ 1% Market Share that Serve Residential
Los Angeles-Long Beach-Santa Ana	10	10	7	4	2	0
Riverside-San Bernardino-Ontario	3	4	3	1	1	0
Sacramento-Arden-Arcade-Roseville	6	6	4	1	1	0
San Diego-Carlsbad-San Marcos	9	7	6	3	2	0
San Francisco-Oakland-Fremont	10	11	6	2	1	0
San Jose-Sunnyvale-Santa Clara	7	8	3	0	0	0
Santa Rosa-Petaluma	3	3	2	1	1	0

14. For the sake of completeness, I note that the change from a wire-center to an MSA market definition would not alter my conclusions with respect to Verizon's California trigger claims, either. Table 2 below shows that *none* of the three MSAs for which Verizon sought a finding of no impairment contained three or

⁸ SBC's trigger claim excluded non-cable CLECs with fewer than five loops in any wire center.

⁹ This column includes the effects of treating Allegiance and XO as a single, combined company. In some cases, the number of carriers is larger than the total number of carriers in the SBC trigger claim because this column does not include the effect of screening out non-cable carriers with fewer than five lines in a given wire center. That screen is reflected in the results in the following column.

more competitors that met all of my criteria.¹⁰ Indeed, Verizon's own final analysis failed to identify three trigger candidates in two of these three MSAs.

Table 2 - Results of MSA Analysis for Verizon CA Territory

MSA	Number of Triggering CLECs					
	VZ Trigger atm	CLECs that Own Switches and Are Unaffiliated ¹¹	Active, Unaffiliated CLECs with ≥ 5 Lines	Active, Unaffiliated CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs with ≥ 1% Market Share that Serve Residential
Los Angeles-Long Beach-Santa Ana	9	6	6	3	2	1
Riverside-San Bernardino-Ontario	2	2	2	1	1	0
San Francisco-Oakland-Fremont	2	1	0	0	0	0

15. Thus, in the California impairment proceeding, there was no geographic market¹² in which either SBC or Verizon identified at least three switch-based competitors that provide meaningful evidence of the ability to overcome barriers to entry without access to UNE switching. Significantly, this conclusion is confirmed by the report filed on October 4, 2004, by the Staff of the California Public Utilities

¹⁰ These results were generated using the MSA version of the spreadsheet tool that I presented along with my October 4, 2004 declaration. The Verizon CA MSA spreadsheet tool is attached hereto as electronic-only Exhibit 2 to this Reply Declaration.

¹¹ This column includes the effects of treating Allegiance and XO as a single, combined company.

¹² This conclusion also includes the "UNE loop density zone" market definition tentatively advanced by Allegiance in the California proceeding. In the California proceeding, I presented "density zone" results for both SBC and Verizon using an appropriately modified version of the spreadsheet tool and applying the same screening criteria. My analysis showed that no density zone had three or more competitors that met all my criteria.

Commission, which reflects the Staff's review of the full record of the California proceeding.¹³ The CPUC Staff also confirmed the appropriateness of MCI's preferred wire-center market definition and each of the screening criteria that I have applied in my analysis.¹⁴

B. Illinois

16. SBC sought a finding of no impairment for just one Illinois MSA, the Chicago – Naperville – Joliet MSA. That MSA, however, encompasses nearly 90 percent of all SBC retail lines in Illinois.
17. As of September 2003, there were over *****BEGIN PROPRIETARY END PROPRIETARY***** UNE-P lines in service in wire centers in the Chicago – Naperville – Joliet MSA that had no competitive providers using their own switches, even according to SBC's count of competitive providers. There were also almost *****BEGIN PROPRIETARY END PROPRIETARY***** UNE-P lines in service in wire centers that had no UNE-L competitors (that is, no choice except a cable provider), even according to SBC's count of competitors that self-deploy switching. Thus, a decision to grant SBC's request for a finding of no impairment in the Chicago – Naperville – Joliet MSA would leave tens of thousands of customers without any choice of provider whatsoever, and still more

¹³ CPUC, Staff Report on Investigation Concerning Competitive Local Carriers' Deployment of Facilities, Prepared for Submission to the Federal Communications Commission, October 4, 2004 (hereinafter "CPUC Staff Report"), at 8.

¹⁴ *Id.* at 7-8.

customers with only a choice of an intermodal provider (a choice those customers may not perceive to be comparable to wireline telephony), based solely on evidence that some customers in other wire centers have been able to obtain service from a switch-based provider other than SBC.

18. Illinois was unique among the state proceedings in which I participated in that the proceeding was abated just before the final round of testimony was filed.¹⁵ Additional evidence of which I had become aware subsequent to the filing of my second round of testimony led me to refine my position on some of SBC's claimed trigger candidates, and those refinements are reflected in the summary chart for Illinois that is included in Exhibit 13 to this Reply Declaration. The evidentiary basis for these positions is described in Proprietary Exhibit 3 to this Reply Declaration.¹⁶
19. My analysis, reported in Table 3 below, shows that there are *no* wire centers in the Chicago – Naperville – Joliet MSA in which SBC's data identified three or more competitors that met all of my screening criteria.¹⁷ Although MCI has demonstrated that entry by cable companies is not probative of whether additional

¹⁵ The California, Michigan and Texas proceedings all had developed complete records, including testimony, hearings and briefing, prior to their termination, and the Administrative Law Judge ("ALJ") in Michigan had issued his Proposed Decision.

¹⁶ Because the names of alleged triggering carriers were treated as confidential in the Illinois proceeding, Exhibit 3 is available only in a proprietary format and is redacted in its entirety in the version available for public inspection.

¹⁷ These results were generated using the Illinois wire-center version of the spreadsheet tool, which is attached hereto as part of electronic-only Exhibit 4 to this Reply Declaration.

companies will be able to enter using a UNE-L strategy, even without excluding cable companies from the analysis on that basis, I note that there was *no* wire center in the Chicago – Naperville – Joliet MSA in which three or more competitive companies that meet all of my other screening criteria are offering service to mass market customers.

Table 3 - Results of Wire Center Analysis for SBC Illinois Territory

MSA	Total Number of SBC Wire Centers in MSA	Number of SBC Wire Centers With At Least 3 CLECs					
		Included in SBC Trigger Claim ¹⁸	CLECs that Own Switches and Are Unaffiliated	Active, Unaffiliated CLECs with ≥ 5 Lines	Active, Unaffiliated CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs with ≥ 1% Market Share that Serve Residential
Chicago-Naperville-Joliet	155	72	67	67	13	12	0

20. Once again, the bottom-line result would remain the same for SBC's preferred MSA market definition.¹⁹ As Table 4 below reports, SBC's data did not identify three or more competitors in the Chicago – Naperville – Joliet MSA that met all of my screening criteria. In fact, *none* of SBC's trigger candidates met all of the criteria, which include the 1% market share test to ensure that any competitor

¹⁸ SBC based its trigger claim on an MSA analysis. However, this count reflects the wire center count of CLECs presented in SBC's underlying data. SBC's trigger claim excluded non-cable CLECs with fewer than five loops in any wire center.

¹⁹ This result also applies to the county-based market definitions that the ICC Staff proposed in the Illinois state impairment proceeding. That is, there was no market as defined by the ICC Staff in which three or more competitors met all of my screening criteria.

counted toward the trigger has attained sufficient volume to demonstrate (at least minimally) that it has overcome barriers to entry.

Table 4 - Results of MSA Analysis for SBC Illinois Territory

MSA	Number of Triggering CLECs					
	SBC Trigger Claim ²⁰	CLECs that Own Switches and Are Unaffiliated	Active, Unaffiliated CLECs with ≥ 5 Lines	Active, Unaffiliated CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs with ≥ 1% Market Share that Serve Residential
Chicago-Naperville-Joliet	10	7	6	3	3	0

21. These results are especially surprising because the Chicago – Naperville - Joliet MSA includes the UNE loop pricing zone that long had the lowest loop prices in the country, reflecting in part the very high density of access lines in that area. The inability of switch-based competitors to make significant inroads in the Chicago area mass market, particularly for residential consumers, suggests that much remains to be accomplished before such competition offers a meaningful alternative to UNE-P based competition.

²⁰ SBC screened out non-cable CLECs from wire centers in which they have less than five lines.

C. Michigan

22. In the Michigan state impairment proceeding, SBC identified only seven MSAs as qualifying for a finding of no impairment; once again, however, those seven MSAs encompass almost 90 percent of SBC's retail lines in the state.
23. As of September 2003, in the seven MSAs for which SBC Michigan sought a finding of no impairment, there were over *****BEGIN PROPRIETARY END PROPRIETARY***** UNE-P lines in service in wire centers that had no competitive providers using their own switches, even according to SBC's count of competitive providers. In those same seven MSAs, there were over *****BEGIN PROPRIETARY END PROPRIETARY***** UNE-P lines in service in wire centers that have no UNE-L competitors (that is, no choice except a cable provider), even according to SBC's count of competitors that self-deploy switching. Thus, a decision to grant SBC's request for a finding of no impairment in the seven Michigan MSAs would leave tens of thousands of customers without any choice of provider whatsoever, and still more customers with only a choice of an intermodal provider (a choice those customers may not perceive to be comparable to wireline telephony), based solely on evidence that some customers in other wire centers have been able to obtain service from a switch-based provider other than SBC.
24. Moreover, the actual UNE-L presence in those other wire centers is far from sufficient to guarantee that all existing UNE-P customers in those wire centers would have a realistic option to obtain service from a UNE-L competitor. Indeed,

SBC's own forecast of UNE-L lines in Michigan indicates that *****BEGIN**

PROPRIETARY . END PROPRIETARY***²¹

25. Nonetheless, SBC sought a finding of no impairment based on evidence supposedly demonstrating that some eleven competitors (ten UNE-L providers and one cable provider) were serving mass-market customers via their own switches in one or more of the seven Michigan MSAs. Exhibit 5 to this declaration summarizes the evidence in the Michigan state impairment proceeding concerning these eleven competitors and demonstrates that most of them should not be counted toward the retail trigger in any geographic market in Michigan, however defined.²²
26. Based on this evidence, my analysis showed that *none* of the wire centers in the seven MSAs for which SBC sought a finding of no impairment contained three or more competitors that met all of my screening criteria.²³ As shown in Table 5 below, SBC itself had only claimed that triggering CLECs served mass-market customers in 48 of the 169 wire centers in these seven MSAs. After eliminating ILEC affiliates and companies that were not actively serving mass-market

²¹ Confidential attachment "STI-SBC-96" to SBC's response to Sage's First Data Request, which was included in the record of Michigan PSC Case No. 13796 as part of Exhibit ____ (TLM-20) to my February 20, 2004 Response Testimony in that docket.

²² Exhibit 5 summarizes the evidence supporting the classification of the various trigger candidates on my screening criteria, as summarized in the table attached as part of Exhibit 13 to this Reply Declaration.

²³ These results were generated using the Michigan wire-center version of the spreadsheet tool, which is attached hereto as electronic-only Exhibit 6 to this Reply Declaration.

customers, there were no wire centers remaining with three or more switch-based competitors, even before applying the remainder of my screening criteria.

Table 5 - Results of Wire Center Analysis for SBC Michigan Territory

MSA	Total Number of SBC Wire Centers in MSA	Number of SBC Wire Centers With At Least 3 CLECs					
		Included in SBC Trigger Claim ²⁴	CLECs that Are Not Affiliated with an ILEC	Active, Unaffiliated CLECs with ≥ 5 Lines	Active, Unaffiliated CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs with $\geq 1\%$ Market Share that Serve Residential
Ann Arbor	9	3	3	0	0	0	0
Battle Creek	5	2	0	0	0	0	0
Detroit-Warren-Livonia	88	29	28	0	0	0	0
Grand Rapids-Wyoming	33	6	5	0	0	0	0
Holland-Grand Haven	8	3	1	0	0	0	0
Kalamazoo-Portage	8	1	0	0	0	0	0
Lansing-East Lansing	18	4	2	0	0	0	0
Total in all 7 MSAs	169	48	39	0	0	0	0

27. As was the case in California and Illinois, the ultimate conclusion of my analysis is unaffected by the decision to use a wire-center or an MSA market definition. *None* of the seven MSAs for which SBC Michigan sought a finding of no impairment contained three or more competitors that met all of my criteria,²⁵ as is shown in Table 6 below. After eliminating ILEC affiliates and companies that were not actively serving mass-market customers, there were no MSAs remaining

²⁴ SBC based its trigger claim on an MSA analysis. However, this count reflects the wire center count of CLECs presented in SBC's underlying data. SBC's trigger claim excluded CLECs with fewer than five loops in any wire center.

²⁵ These results were generated using the Michigan MSA version of the spreadsheet tool, which is attached hereto as electronic-only Exhibit 7 to this Reply Declaration.

with three or more switch-based competitors, even before applying the remainder of my screening criteria.

Table 6 - Results of MSA Analysis for SBC Michigan Territory

MSA	Number of Triggering CLECs					
	SBC Trigger Claim	CLECs that are not Affiliated with an ILEC	Active, Unaffiliated CLECs with ≥ 5 Lines	Active, Unaffiliated CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs with $\geq 1\%$ Market Share that Serve Residential
Ann Arbor	7	6	2	1	0	0
Battle Creek	3	1	0	0	0	0
Detroit-Warren-Livonia	9	8	2	1	0	0
Grand Rapids-Wyoming	4	3	1	0	0	0
Holland-Grand Haven	4	3	1	0	0	0
Kalamazoo-Portage	3	1	0	0	0	0
Lansing-East Lansing	4	3	1	0	0	0

28. This bottom-line result was confirmed by the ALJ's Proposed Decision in the Michigan state impairment proceeding. The ALJ adopted the wire-center market definition²⁶ and most (but not all) of the screening criteria proposed by MCI.²⁷ He then concluded that SBC had failed to identify three or more competitors in any wire center that met all of the screening criteria adopted.²⁸

²⁶ *Proposal for Decision* in Michigan PSC Case No. U-13796, May 10, 2004 (hereinafter, "Michigan *Proposal for Decision*"), at 9. A copy of this proposed decision was included as an electronic appendix to the Initial Comments and Waiver Request of the Michigan Public Service Commission.

²⁷ *Id.*, at 17-23.

²⁸ *Id.*, at 24.

D. Texas

29. SBC identified only five MSAs in its Texas service territory as qualifying for a finding of no impairment for mass-market switching. As was true of the other states I have discussed, however, those five MSAs encompass the vast majority of all SBC lines in the state.²⁹ The evidence in the Texas impairment proceeding made clear that the extent of competition for mass-market customers in SBC's Texas service territory depends substantially on the continued availability of UNE switching.
30. For example, as of October 2003, in the five MSAs for which SBC Texas sought a finding of no impairment, there were almost *****BEGIN PROPRIETARY
END PROPRIETARY***** UNE-P lines in service in wire centers that had no competitive providers using their own switches to serve mass-market customers, even according to SBC's count of competitive providers. By SBC's own admission, these residential and small business customers would have no competitive alternative available to them whatsoever.
31. In those same five MSAs, there were close to *****BEGIN PROPRIETARY
END PROPRIETARY***** UNE-P lines in service in wire centers that had no

²⁹ PUCT Docket No. 28607, Direct Testimony of Jon R. Loehman, February 9, 2004 (hereinafter "TX Loehman Direct"). Attachment JRL-4 to that testimony asserts that for the SBC five MSAs, there are 6,707,669 SBC Texas retail lines compared to 8,725,583 SBC Texas retail lines in the 23 MSAs in which SBC offers service in Texas.

mass-market UNE-L competitors (that is, no choice except a cable provider),³⁰ even according to SBC's count of competitors that self-deploy switching. Thus, SBC's proposal to eliminate competitors' access to UNE switching in those five MSAs would leave hundreds of thousands of customers without any choice of provider whatsoever, and still more customers with only a choice of an intermodal provider (a choice those customers may not perceive to be comparable to wireline telephony), based solely on evidence that some customers in *other* wire centers have been able to obtain service from a switch-based provider other than SBC. Moreover, the actual UNE-L presence in those other wire centers is far from sufficient to guarantee that all existing UNE-P customers in those wire centers (particularly residential customers) would have a realistic option to obtain service from a UNE-L competitor.

32. As SBC acknowledges, it declined to provide any evidence concerning potential deployment in state mass-market switching impairment proceedings; therefore, the Commission has no basis other than SBC's unsupported assertion for determining that UNE-L providers are likely to extend service to the currently unserved wire centers throughout the SBC five MSAs. That presumption is inconsistent with both experience to date in Texas and SBC's own forecasts.

³⁰ The data for this calculation come from the Attachment to SBC's response to Joint CLEC RFI 1-2 d and e, "Tx RFI 28607-2 d e UNEP res_bus bender response to Sands 120203.xls", and TX Loehman Direct, Attachment JRL-10. Both were filed in PUCT Docket No. 28607.

Indeed, SBC's own forecast of UNE-L lines in Texas indicates that *****BEGIN
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33. SBC has every reason to expect that the pace of competition in Texas and elsewhere would slow drastically if UNE-P ceased to be available to serve most of its residential customers in the state. The Commission should presume that SBC's objective in this proceeding is precisely to achieve such a reduction in competition—and not, through some strange form of altruism, to encourage “true” facilities-based competition.
34. This view of SBC's position is all the more plausible because several of the UNE-L providers that it cited as “triggering” CLECs provide service entirely or predominantly to business customers – and have not indicated any intention of serving residential customers via self-deployed switches. Hundreds of thousands of Texas consumers who have “voted with their feet” by selecting a local service provider that relies on UNE-P (and therefore on UNE switching) are likely to be denied the competitive alternative for which they have indicated a preference if SBC has its way.
35. Exhibit 13 includes a summary table indicating the various “trigger screens” that would eliminate virtually all of the competitors that SBC identified as triggering CLECs in the Texas state mass-market switching proceeding. Exhibit 8 describes

³¹ SBC Response to Joint CLEC Request 3-13, a copy of which was included in the record of PUCT Docket No. 28607 as part of Attachment TLM-Rebuttal-20 to my March 19, 2004 Rebuttal Testimony.

the detailed information on the record in Texas demonstrating the appropriateness of each of the determinations shown in the MCI summary table.

36. Table 7 below presents the results of applying my screening criteria to the wire-center-level data that SBC provided in Texas.³² There were *no* wire centers in the five Texas MSAs for which three or more of the competitors that SBC identified as counting toward the retail trigger actually passed all of my screening criteria.³³ Although, as noted above, entry by cable companies is not probative of impairment, even if I had not excluded cable companies from the analysis on that basis, there were *no* wire centers in Texas in which three or more competitive companies that meet all of my other screening criteria are offering service to mass market customers.

³² In most cases, I used SBC's data without alteration. In two instances in which competitors provided testimony or data responses indicating that SBC's data clearly were in error, I corrected these data anomalies before applying my other screening criteria.

³³ These results were generated using the Texas wire-center version of the spreadsheet tool, which is attached hereto as electronic-only Exhibit 9 to this Reply Declaration.

Table 7 - Results of SBC TX Wire Center Analysis

MSA	Total Number of SBC Wire Centers in MSA	Number of SBC Wire Centers With at least 3 CLECs					
		Included in SBC Trigger Claim ³⁴	CLECs that Own Switches and are Unaffiliated with another CLEC	Active, Unaffiliated CLECs that Own Switches	Active, Unaffiliated CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs with $\geq 1\%$ Market Share that Serve Residential
Austin-Round Rock	29	8	8	7	0	0	0
Corpus Christi	10	2	2	0	0	0	0
Dallas-Fort Worth-Arlington	88	30	26	18	0	0	0
Houston-Baytown-Sugar Land	79	20	20	18	0	0	0
San Antonio	43	9	9	8	0	0	0
Total in all 5 MSAs	249	69	65	51	0	0	0

37. Indeed, as the Commission can verify using the spreadsheet tool provided as Exhibit 9 hereto, the market share screen *alone* would have left no wire centers in which there were three competitors. Thus, even when one considers every competitor identified by SBC as a triggering company, there is not a single wire center in any of the MSAs in which SBC has identified three companies each of which has risen to the *de minimis* 1% market share level I have used as a way to ensure that evidence of “actual deployment” provides the kind of showing that the Commission envisioned when it established the trigger test as an alternative to a full-blown potential deployment analysis.

³⁴ SBC based its trigger claim on an MSA analysis; this count reflects the wire center count of CLECs that SBC presented in TX Loehman Direct, Confidential Attachment JRL-10.

38. Again, the analysis produces the same bottom-line result using SBC's preferred MSA market definition.³⁵ Table 8 below shows the results of that analysis.³⁶

Table 8 - Results of SBC TX MSA Analysis

MSA	Number of Triggering CLECs						
	SBC Trigger Claim ³⁷	CLECs that Own Switches	CLECs that Own Switches and are Unaffiliated with another CLEC	Active, Unaffiliated CLECs that Own Switches	Active, Unaffiliated CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs that Serve Residential	Active, Unaffiliated UNE-L CLECs with $\geq 1\%$ Market Share that Serve Residential
Austin-Round Rock	8	8	7	6	2	1	0
Corpus Christi	3	3	3	2	1	0	0
Dallas-Fort Worth-Arlington	10	9	8	6	3	2	0
Houston-Baytown-Sugar Land	9	9	8	6	2	1	0
San Antonio	8	9	7	6	2	1	0

39. Thus, no matter how one defines the geographic market, the data on which SBC based its Texas state impairment showing do not indicate the presence of at least three competitors, each of which shows clear evidence of having surmounted

³⁵ I also obtained the same bottom-line result when applying my screening criteria to SBC's data, organized in a manner that conformed to the "groups of wire centers" market definition proposed by AARP witness Dr. Ben Johnson. Dr. Johnson had an opportunity to review that analysis during the Texas proceeding and endorsed the use of my spreadsheet tool (without necessarily accepting MCI's preferred market definition or all of MCI's proposed screening criteria) as a sound basis for conducting a trigger analysis. PUCT Docket No. 28607, Tr. 655-658 (Johnson), April 7, 2004.

³⁶ These results were generated using the Texas MSA version of the spreadsheet tool, which is attached hereto as electronic-only Exhibit 10 to this Reply Declaration.

³⁷ TX Loehman Direct, Attachment JRL-9.

barriers to entry to provide service to mass-market customers, particularly residential customers.

III. THE ADDITIONAL (NON-“TRIGGER”) DATA CITED BY THE ILECS ARE IRRELEVANT TO THIS COMMISSION’S EVALUATION OF ACTUAL DEPLOYMENT OF MASS-MARKET SWITCHING

40. In its summaries of the state mass-market switching impairment proceedings,³⁸ SBC provides tables that it purports to represent “[t]he key data that SBC produced in support of its geographic market definition and trigger analysis.”³⁹ For each of the MSAs for which SBC sought a finding of no impairment, SBC identifies not only the number of alleged triggering CLECs, but also five other statistics on which it relied to demonstrate that CLECs would not experience impairment in the MSA in question without access to unbundled switching. For each MSA, these five data points include: (1) the number of CLEC switches serving the MSA; (2) the percentage of SBC retail lines in wire centers with CLEC mass-market loops; (3) the percentage of SBC wire centers with CLEC collocations; (4) the percentage of SBC wire centers with ported numbers; and (5) the number of CLEC NXX codes.⁴⁰
41. Other ILECs rely on similar data in their presentations. For example, the *UNE Report 2004*, on which BellSouth, SBC, Qwest and Verizon all rely, reports

³⁸ SBC Comments, Attachment A.

³⁹ See, for example, SBC Comments, Attachment A-IL, p. 2.

⁴⁰ *Id.*

statistics on the total number of CLEC switches⁴¹ (corresponding to Item 1 on SBC's list) and the percentage of access lines in the top 150 MSAs in wire-centers with mass-market UNE-L⁴² (corresponding to Item 2 on SBC's list). Verizon emphasized these statistics,⁴³ and embellished upon them with a series of Verizon-specific statistics and maps purporting to show the massive extent of competition in the Verizon service territories.⁴⁴

42. I had the opportunity to perform an in-depth review of the five data points cited by SBC in several state proceedings; I also had the opportunity to review related data for Verizon in the California impairment proceeding. My review indicated that most of this information is, at best, of tenuous relevance to the mass-market switching impairment issue before this Commission and that the data in question are, at worst, deceptive indicators of the level of switch-based competition, at least in the MSAs for which SBC sought a finding of no impairment and the California MSAs for which Verizon sought a similar finding.
43. Only Item 2 on SBC's list—the percentage of SBC retail lines in wire centers with CLEC mass-market loops—relates directly to the extent of actual deployment of competitive alternatives to SBC's UNE switching. SBC admitted

⁴¹ Peter W. Huber and Evan T. Leo, *UNE Fact Report 2004*, Prepared for and Submitted by BellSouth, SBC, Qwest and Verizon, October 2004 (hereinafter "*UNE Report 2004*"), at II-37.

⁴² *Id.*, at II-42 to II-43; *see especially* Table 10.

⁴³ *See* Declaration of Ronald H. Lataille, October 4, 2004, submitted as Attachment J to Verizon's Comments (hereinafter "Lataille Decl."), ¶¶ 6-7.

⁴⁴ Lataille Decl., ¶¶ 8-18, and maps provided as Attachment O to Verizon's Comments.

in the state proceedings that its data on CLEC switches, CLEC collocations, ported numbers and CLEC NXX codes were not limited to situations in which the CLEC in question used the switch, the collocation, the ported number or the NXX code to serve mass-market customers.⁴⁵ Therefore, I first will address SBC's Item 2 (which is also included in the *UNE Report 2004*) and then will discuss the remaining four alleged indicators of switch-based competition.

A. **The Percentage of Retail Lines in Wire Centers with At Least Some Mass-Market UNE-L Competition Is a Highly Deceptive Measure of Mass-Market Competition**

44. Both SBC's state summaries and the *UNE Report 2004* provide data purporting to represent the percentage of total ILEC retail lines in the MSAs that lie within wire centers in which switch-based CLECs self-provide switching. In the state proceedings, SBC cited this "coverage" percentage as evidence that competitors enter nearly ubiquitously throughout an MSA, but my own calculations using SBC's data showed that was not the case.
45. For example, SBC claims that switch-based CLECs were serving mass-market customers in wire centers representing *****BEGIN PROPRIETARY END PROPRIETARY***** of the total retail lines in the five MSAs for which it sought

⁴⁵ See, for example, SBC responses to Data Requests MCIS 3-5 through 3-28 generally, which were provided as Attachment TLM-R15 to my January 16, 2004 Rebuttal Testimony in CPUC Docket Nos. R.95-04-043/I.95-04-044 and SBC Responses to Joint CLEC Third Requests for Information, Nos. 3-8 a-d, which were attached to my March 19, 2004 Rebuttal Testimony in PUCT Docket No. 28607.